SUPREME COURT, U. S.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1973

No. 73-1018

UNITED STATES OF AMERICA,
Petitioner

vs.

MARTIN DeWALT MAZURIE, et al.,
Respondents.

BRIEF OF THE STATE OF WYOMING AS AMICUS CURIAE IN OPPOSITION TO MOTION OF PETITIONER FOR LEAVE TO FILE FOR WRIT OF CERTIORARI OUT OF TIME AND PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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TO: THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Amicus Curiae, the State of Wyoming, respectfully prays that this Court deny the MOTION FOR LEAVE TO FILE OUT OF TIME and PETITION FOR A WRIT OF CERTIORARI filed in the above-captioned case.

INTEREST OF THE STATE

The State of Wyoming, for the protection of the welfare, health, peace, morals and safety of the people of Wyoming, has provided for the regulation of all spirituous, fermented and malt liquors sold within the boundaries of the state. (Laws 1935, ch. 87 §1; C.S. 1945 §53-201; C.S. 1957 §12-1) Under the provisions of the Wyoming Alcoholic Beverages Act any qualified person may apply for a license to sell liquor, but the number of licenses issued within any one city, town or county is limited by statute.[1] Upon successful application the licensee is given a "personal privilege" entitling him to sell liquor for one year. (Wyoming Statutes 1957 §12-13, as amended). Thereafter the license must be renewed annually. (Wyoming Statutes 1957 §12-13).

The Wyoming Alcoholic Beverages Act further provides for the protection of those within the state by providing for the license to be suspended or revoked through a court action brought in the name of the State of Wyoming by the attorney general, or any county or prosecuting attorney or through a hearing procedure before the Wyoming Liquor Commission, both actions being subject to a later appeal. (Wyoming Statutes 1957 §12-29, as amended). Thus, the State of Wyoming has protected those within its boundaries from the evils of unregulated liquor traffic and, further, provided protection, through appellate action, to those that have expended their energies and funds necessary and prerequisite to being granted

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[1] In the instant action the County Commissioners were responsible for the license granted the Respondent, being located outside any town or city boundary and the pertinent portion of the statute reads: "Retail licenses may be issued in counties outside of incorporated cities or towns in the ratio of one retail license to each five hundred (500) population of said county outside of such cities. . . ." Wyoming Statutes 1957 §12-6, as amended.

a valid Wyoming liquor license. Respondent in this case is, and has been continuously throughout this action, holder of a valid liquor license issued under the authority of and subject to the laws of the State of Wyoming. R. 125.

The State of Wyoming takes the position that it owes Respondent and others similarly situated protection against unconstitutional encroachment on their "personal privilege" and property rights as valid licensees.

REASONS FOR DENYING THE MOTION AND PETITION

1. The State of Wyoming having jurisdiction must take cognizance of and an interest in the Respondent's and the three (3) other licenses in force and effect on the reservation, all being similarly situated, i.e., non-Indians dispensing liquor on fee-patented lands within the reservation while holding valid state licenses. Under the tribal ordinance in question any of the above licenses could be suspended, revoked or cancelled *ex parte* by the Indian Business Council without due process of law and in disregard for the liquor laws of Wyoming.

The pertinent part of the ordinance reads as follows:

> "**Sec. 6.** *Cancellation and suspension.* **Any license issued hereunder may be suspended or cancelled by the Joint Business Council for the breach of any of the provisions of this Ordinance, or of the conditions of the tribal license, upon hearing before the Joint Business Council after 10 days' notice to the licensee.**"

There is no provision for an appeal from this section, nor does the Ordinance provide for an appeal of any decisions of the Joint Business Council which would effect a valuable property right held by the licensee at the time of a cancellation or suspension.

2. Although stating therein to the contrary in Section 1 thereof, the ordinance has pre-empted state law. By revoking Respondent's license and prosecuting him by criminal information without regard to the Wyoming Alcoholic Beverages Act, the Wind River Tribes and the United States Attorney have essentially abrogated the liquor laws and the sovereignty of the State of Wyoming.

The Respondent is solely within the jurisdiction of the State of Wyoming and this section of the ordinance denies him the protections of due process of law granted by the state statutes cited herein. The ordinance itself recognizes that the Tribes need jurisdiction to effectuate laws that affect those within "Indian Country."

3. The State of Wyoming in its sovereign capacity recognizes the self-governing powers of the Indian Tribe including its right, in its sovereign capacity, to regulate tribal members and property within the jurisdictional boundaries of the Tribe. United States Department of the Interior, *Federal Indian Law*, 395-6 (1958). However, the Respondent in this matter is located on land that is not within the jurisdiction of the Tribe and thus subject to state regulation. As pointed out by the Court of Appeals, Tenth Circuit in its decision:

> **"The appellant's tavern is located within the exterior boundaries of the Reservation on a small tract of land patented in fee by the United States in 1954 under 24 Stat. 390 and 34 Stat. 182 to appellant's predecessors. The patent contains no restrictions as to the use to which the land may be put. The land is taxed by the State of Wyoming, and the state provides the usual public services for it. It is in a Fremont County School District which provides schools for the area, and on a county road."**

That the State of Wyoming had jurisdiction over the Respondent, even though within the boundaries of the Wind River Reservation, can be readily shown.

Once Indian title has been extinguished and a non-Indian holds the land in fee the jurisdiction of the state, for all purposes of government, is full and complete. See, *Clairmont v. United States*, 225 U.S. 551 (1911) and *Bates v. Clark*, 95 U.S.

204 (1877). However, in the instant situation, the jurisdiction of the state can be more readily appreciated from the fact that this land has never been under the jurisdiction of the governing body of the Wind River Tribes.

But most importantly, when Congress passed legislation in 1887 providing for such patented lands it subjugated such lands to the civil and criminal process and laws of the state or territory in which the land was located. (24 Stat. 390, Revised May 8, 1906, 34 Stat. 182).

CONCLUSION

1. It is the position of the State of Wyoming that under the facts of this case, as presented by the opposing parties, that Respondent and other non-Indian fee patent land owners within the boundaries of the Wind River Indian Reservation are not solely subject to jurisdiction of the Joint Business Council for the purpose of liquor regulation. The action taken by the council infringed upon the sovereignty of the State of Wyoming and its right to govern non-Indian liquor licensees holding fee patented lands within the boundaries of the state and the Wind River Reservation.

We, therefore, respectfully submit that the petition for a Writ of Certiorari to the United States Court of appeals for the Tenth Circuit should be denied.

Respectfully submitted,

/s/ Sterling A. Case
Deputy Attorney General
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204 Capitol Building
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COUNSEL FOR AMICUS CURIAE

CERTIFICATE OF MAILING

I, Sterling Arthur Case, Deputy Attorney General for the State of Wyoming, do hereby certify that I served the within and foregoing BRIEF OF THE STATE OF WYOMING AS AMICUS CURIAE IN OPPOSITION TO MOTION OF PETITIONER FOR LEAVE TO FILE FOR WRIT OF CERTIORARI OUT OF TIME AND PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT upon counsel for Petitioner by placing one copy thereof in the United States mails, postage prepaid, to the respective attorneys of record, as follows:

To Robert H. Bork, Solicitor General, Department of Justice, Washington, D.C. 20530;

To Wallace H. Johnson, Assistant Attorney General, Department of Justice, Washington, D.C. 20530;

To Harry R. Sachse, Assistant to the Solicitor General, Department of Justice, Washington, D.C. 20530;

To Raymond N. Zagone, Attorney, Department of Justice, Washington, D.C. 20530;

To Lawrence E. Shearer, Attorney, Department of Justice, Washington, D.C. 20530; on this 1st day of February, 1974.

/s/ Sterling A. Case
Deputy Attorney General
for the State of Wyoming
204 Capitol Building
Cheyenne, Wyoming 82002
COUNSEL FOR AMICUS CURIAE